

The Illinois State Use Tax rate is 6.25%. See 35 ILCS 105/3-10. (This is a GIL).

December 4, 2001

Dear Xxxxx:

This letter is in response to your letter dated September 6, 2001 that we received on September 28, 2001. This letter also serves to confirm the clarifying telephone conversation we had on November 16, 2001 with PERSON. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

This is a request for a letter ruling concerning Illinois Retailers' Occupation Tax (sales tax) on sales of videotapes and DVD's to video rental businesses in Illinois.

AAA is a limited partnership which includes divisions that collect and pay in R.O.T. and/or pay Illinois use tax under sales tax permit numbers ###. The divisions paying in Illinois sales or use tax are BBB, CCC and DDD. BBB and CCC pay Illinois use tax on property sent into Illinois. DDD collects sales tax on sales made in Illinois.

DDD sells videotapes and DVD's to Illinois video rental businesses in Illinois through its sales personnel in Illinois. The sales personnel, who work from their homes, take orders from video rental businesses and e-mail those orders to CITY/STATE for acceptance. At CITY, credit checks are performed, invoices prepared, and inventory pull sheets are generated.

The products, for the most part, are shipped from an EEE warehouse located in CITY2, Illinois. (EEE is an unrelated company performing this service under contract to DDD.) If the products ordered are not available at that location, they will be shipped from STATE2 or another location outside of Illinois.

We have been referred to Illinois Informational Bulletin FY86-54 by one of your auditors. We note that Bulletin 86-54 describes situations where sales tax may not be due on some purchases by a video rental business, i.e., where some purchases are made for retail sale. The Bulletin explains that a partial exemption is allowed if the purchaser has reason to believe he will be selling a certain percentage of tapes as retail sales and renting the rest. In such a case, we believe DDD may accept a Certificate of Resale for that purchase or a percentage of the purchases.

Some of DDD's customers have requested that it accept a Certificate of Resale for other than sell-through merchandise. These customers state that they are relying on guideline 1 in Bulletin 86-54: "...if you don't pay the tax to your supplier, you must self-assess the tax on line 27 of your sales tax return."

Query 1: For shipments to an Illinois retail rental business from a warehouse in Illinois must DDD collect R.O.T. on sales to the retail rental business?

Query 2: For shipments to an Illinois retail rental business from a location outside Illinois must DDD collect R.O.T. or use tax on sales to the retail rental business?

Query 3: When DDD accepts a Certificate of Resale from an Illinois video rental business wherein a percentage of sales are stated to be for sale at retail and the remainder are stated to be for rental must DDD do any independent verification of the claimed percentage?

Query 4: For shipments to an Illinois retail rental business from a warehouse in Illinois may DDD accept a Certificate of Resale wherein the retailer states he will self-assess the tax in accordance with Bulletin 86-54?

We appreciate your consideration of this request for a ruling letter.

If you have any questions in this regard or need any additional information please feel free to contact the undersigned.

As we discussed in our conversation, the Illinois Informational Bulletin about which you inquire, FY84-54, is currently being codified in the Illinois rulemaking process as 86 Ill. Adm. Code 130.2013. This proposed regulation sets out the tax liabilities of persons who purchase tangible personal property for the purpose of renting it to others, or of using it themselves. See 25 Ill. Reg. 11759, Issue # 37.

We understand you ask the first two questions in the context that the sales are taxable because the purchasers intend to use the items. The applicable tax rate for your first two questions depends upon whether the sales are Illinois retail sales. An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts of sales and must collect the corresponding Use Tax incurred by purchasers.

We understand from our telephone conversation that the DVD and video products in the CITY2 warehouse are owned by BBB and that all your purchase orders are accepted in STATE. As a result, your sales to Illinois customers where your product is shipped from CITY2 in COUNTY are Illinois retail sales subject to Illinois and local Retailers' Occupation Tax liabilities. The total Retailers' Occupation Tax rate for sales made in CITY2 is now 6.75%.

Regarding your second question, please be advised if purchase orders are accepted outside the state (for instance, in STATE), and you ship your product from a location outside Illinois, you will only be required to collect the 6.25% State Use Tax on such Illinois sales. Again, this assumes the transactions are taxable.

Your third query involved a percentage Certificate of Resale. If a purchaser knows that a certain percentage of all purchases from a given seller will be made for purposes of resale, a seller

may accept a percentage Certificate of Resale specifying that a certain portion of the sales made by such seller to such purchaser will be made for purposes of resale. If a seller can accept such a certificate in good faith, Illinois law imposes no additional requirements on the seller to verify the claimed percentage.

The answer to your Query 4 is no. As we discussed in our conversation, Bulletin FY 86-54 does not authorize the use of direct pay permits for purchasers of video or DVD products. Public Act 92-0484 recently established a new direct pay program. However, the Illinois Department of Revenue has only recently issued direct pay permits to certain businesses under the new legislation. Only businesses who hold such permits can be relieved of paying the tax to an Illinois-registered vendor when they make purchases of tangible personal property for use or consumption.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk